

Message Text

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TO USMISSION OECD PARIS IMMEDIATE

INFO AMEMBASSY ATHENS

AMEMBASSY BONN

AMEMBASSY OSLO

AMEMBASSY OTTAWA

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E. O. 11652, N/A

TAGS: SENV, OECD

SUBJECT: TRANSFRONTIER POLLUTION, CANADA-U. S.

BEGIN SUMMARY: AS RESULT OF VISIT US DEL TO OTTAWA, FRI.,
NOVEMBER 1, 1974, US HAS BEEN ABLE TO RESOLVE ITS DIF-
FERENCES WITH CANADA ON TEXT OF TFP ACTION PROPOSAL. USOECD
IS INSTRUCTED TO PROMPTLY CONCERT ITS EFFORTS WITH CANADI-
ANS IN INFORMING OTHER KEY DELS AND SECRETARIAT OF THE
NATURE OF THE AMENDMENT THE US AND CANADA WISH TO MAKE TO
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SECOND PARAGRAPH OF TITLE B. US AND CANADA PLAN TO JOINTLY

PRESENT TEXT FOR ADOPTION AT MINISTERIAL MEETING, BARRING UNFORESEEN DEVELOPMENTS. CANADIANS INFORMED US THAT ELDIN WAS NOW SUGGESTING THAT THE SECOND PARAGRAPH OF TITLE B BE DELETED ON THE GROUNDS THAT THE FORMULATION IS TOO GENERAL AND CAN MEAN VARIOUS THINGS TO VARIOUS STATES. WE REGARD ELDIN'S INITIATIVE TO BE AN UNWELCOME STEP AND ONE WE WOULD BE COMPELLED TO PUBLICLY OPPOSE SHOULD IT GAIN ANY SUPPORT. END SUMMARY.

1. AS A RESULT OF A VISIT BY HERTER, BENGELDSORF AND CROOK TO OTTAWA, US WAS ABLE TO JOINTLY AGREE WITH THE CANADIANS ON SUBSTITUTE TEXT FOR THE SECOND PARAGRAPH OF TITLE B. AGREED TEXT READS AS FOLLOWS: "IN ACCORDANCE WITH THEIR RIGHTS AND OBLIGATIONS UNDER INTERNATIONAL LAW AND THE RESPONSIBILITY OF STATES NOT TO INJURE OTHER STATES THROUGH TRANSFRONTIER POLLUTION; THEY SHOULD SEEK, AS FAR AS POSSIBLE, AN EQUITABLE BALANCE OF RIGHTS AND OBLIGATIONS AS REGARDS THE ZONES CONCERNED BY SUCH POLLUTION."

2. THE ESSENCE OF THIS PROPOSAL WHICH, AS MISSION WILL SEE, IS VERY CLOSE TO CURRENT TEXT, WAS TO GIVE GREATER VISIBILITY TO THE CONCEPT THAT STATES HAVE A RESPONSIBILITY NOT TO "INJURE" OTHERS THROUGH TFP. WHILE THIS CONCEPT ALREADY IS IMPLICIT IN SEVERAL OTHER PROVISIONS OF THE ACTION PROPOSAL, THE CANADIANS WERE CONCERNED TO SEE LANGUAGE INCLUDED IN THE PROPOSAL WHICH COMES CLOSER TO ARTICLE IV OF THE 1909 US-CANADIAN BOUNDARY WATERS TREATY. LATTER INCLUDES THE TEXT THAT "... BOUNDARY WATERS AND WATERS FLOWING ACROSS THE BOUNDARY SHALL NOT BE POLLUTED ON EITHER SIDE TO THE INJURY OF HEALTH OR PROPERTY ON THE OTHER."

3. SUBSTANTIAL SOURCE OF CANADA'S PAST CONCERN, AS MISSION APPRECIATES, WAS FEAR THAT THE PROPOSED PRINCIPLES MIGHT PLACE HER AT A DISADVANTAGE WITH THE US WHEN CONTRASTED WITH THE EXISTING ASSURANCES SHE ENJOYS. OUR PROPOSED NEW LANGUAGE HAS HELPED TO ELIMINATE THIS CONCERN.

4. WE ALSO JOINTLY CONCLUDED IN OTTAWA THAT THE WORD "EQUITABLE" WAS A BETTER ONE THAN "APPROPRIATE" WHICH, THE CANADIANS CONSIDERED AS BEING TOO VAGUE. TERM LIMITS UNCLASSIFIED

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SCOPE OF POSSIBLE INTERPRETATIONS AND IS CLOSER TO US LEGAL POSITION.

5. DURING THE OTTAWA MEETING IT WAS AGREED THAT US AND CANADIAN OECD MISSIONS SHOULD BE INSTRUCTED TO CONCENTRATE THEIR EFFORTS IN PROMPTLY CIRCULATING THIS TEXT TO ALL DELS AS A JOINT US-CANADIAN PRODUCT WITH THE UNDERSTANDING THAT US AND CANADA WOULD HOPE TO GET THIS FORMULATION

ACCEPTED AT THE MINISTERIAL TO ASSURE AFFIRMATIVE ACTION
ON THE TFP PAPER.

6. DURING OUR DISCUSSIONS, THE CANADIANS ADVISED US THAT,
ON THE OCCASION OF HIS RECENT TRIP TO OTTAWA, ELDIN HAD
SUGGESTED THAT THE ENTIRE SECOND PARAGRAPH BE DELETED ON
THE GROUNDS THAT IT WAS TOO VAGUE AND MIGHT MEAN ALL
THINGS TO ALL MEN. WE INFORMED THE CANADIANS THAT WE
STRONGLY DISAGREED WITH ELDIN'S APPROACH, SINCE THE PARA-
GRAPH IN QUESTION CONTAINED AN ESSENTIAL LEGAL PRINCIPLE
FROM THE US PERSPECTIVE. WE ALSO INDICATED THAT WE RE-
GARDED ELDIN'S INITIATIVE AS UNWELCOME AND DANGEROUS FOR
ANY EMERGING CONSENSUS.

7. MISSION, ACCORDINGLY, SHOULD CONCERT WITH CANADIAN DEL
IN INDUCING OTHER DELS TO ACCEPT THIS TEXT, NOTING THAT WE
REGARD THIS AS A "BREAKTHROUGH" THAT SHOULD FACILITATE A
CONSENSUS. YOU SHOULD SEPARATELY INFORM ELDIN AND SECRE-

TARY GENERAL OF US-CANADIAN ACCORD, NOTING THAT US COULD
NOT AGREE TO SEEING THE SUBJECT PARAGRAPH, AS REVISED,
DELETED, AND WOULD STRONGLY HOPE SECRETARIAT WOULD DESIST
FROM SUGGESTING SUCH AN APPROACH. INGERSOLL

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